

Eastern Area Workforce Development Board
Workforce Innovation and Opportunity Act
6-18 Policy Incumbent Worker

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Contact: Inquiries regarding this document should be directed to Administrative Staff of the EAWDB at (575)208-2210.

REFERENCES:

Workforce Innovation and Opportunity Act (WIOA), July 22, 2014, §108, §122, §134, §181 and §194.
Uniform Guidance at 2 CFR §200, et al., TEN 19-16 , Fair Labor Standards Act (FLSA) §203.

1. PURPOSE:

To provide clarification for the Eastern Area Workforce Development Board (EAWDB) WIOA subrecipients regarding NMDWS Guidance 16-008 as it relates the use of Incumbent Worker Training and to establish requirements for the delivery of Incumbent Worker training services under the EAWDB. In the case of a conflict between NMDWS Guidance 16-008 and this policy, NMDWS Guidance shall be the prevailing guidance.

2. BACKGROUND:

The Workforce Innovation and Opportunity Act (WIOA) of 2014 explicitly allows for and encourages the use of incumbent worker training as a local workforce strategy. This training strategy is designed to meet the special requirements of an employer (including groups of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment. In addition, incumbent worker training must be focused on increasing the competitiveness of the employee or employer, and be conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker(s) trained.

3. DEFINITIONS:

- **High-Priority Occupation (HPO)** is an in-demand occupation that has higher skill needs and is likely to provide a self-sufficient wage. Statistical data, regional expert and local area inputs are combined to determine whether or not an occupation meets the high-priority criteria.
- **Incumbent Worker** is an individual who is employed, meets Fair Labor Standards Act requirements for an employer-employee relationship, and has an established employment history with the employer for six (6) months or more.
- **Incumbent Worker Training (IWT)** is training provided to an incumbent worker that is designed to meet the needs of an employer(s) to retain a skilled workforce or avert the need to lay off employees; increase the competitiveness of the employer or employee; and be conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker trained. Such training may also include the upskilling of an employer's current workforce, which may lead to additional opportunities for potential jobseekers.
- **In-Demand Industry Sector** is an industry sector that has a substantial current or potential impact (including jobs that lead to economic self-sufficiency and opportunities for advancement) on the state, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.
- **In-Demand Occupation** is an occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the state, regional, or local economy, as appropriate (for more specific information regarding in demand occupations for the Eastern area please see local board policy 11B-12 Demand Occupations).

Note: The determination of whether an industry sector or occupation is in-demand in a local area is made by the local board, as appropriate, using business and labor market projections and statistics. Incumbent Worker Training must lead to an in-demand occupation, but does not necessarily have to lead to an HPO. However, all HPOs are considered in-demand occupations, and therefore, eligible for incumbent worker training.

4. ACTION

A. Reservation and Use of Funds

The EAWDB may reserve and use not more than 20 percent of the overall adult and dislocated workforce funds allocated to the EAWDB for the federal portion of the cost of an incumbent worker training program. This 20 percent can be used for incumbent worker training activities that are programmatic in nature, as administrative activities must be paid out of the board's administrative funds. The EAWDB encourages its sub-recipient(s) to exercise caution as this will reduce the funds available for other jobseekers, especially those experiencing barriers to employment.

B. Employer Payment of Non-WIOA share

Employers receiving funds for incumbent worker training are required to pay for the non-federal share of the cost of providing such training. The EAWDB in accordance with WIOA Sec. 134(d)(4)(C-d) establishes the employer share as shown below:

The employer share is based on the size of the workforce (wages paid to the participant while in training can be included as part of that share and the share can be provided as cash or in-kind that is fairly evaluated) as follows:

- At least 10 percent of the cost for employers with 50 or fewer employees;
- At least 25 percent of the cost for employers with 51 to 100 employees; and
- At least 50 percent of the cost for employers with more than 100 employees.

The employer size means the number of employees currently employed at the local operation where the incumbent worker training placements will be made. Employer size is determined by the number of employees at the time of the execution of the incumbent worker training contract. This applies to all employers, including employers with seasonal or intermittent employee size fluctuations. Employer contributions may be done through both cash payments and fairly evaluated in-kind contributions.

The Share of the cost of training can include elements such as the expenses related to the:

- Wages the employer pays to the incumbent worker trainee while the worker is attending training. Official payroll records documenting the worker's hours and wages must be used to determine the amount of the employer's share of cost. The EAWDB sub-recipient(s) must track and document employer cost share contributions. Official payroll records documenting the worker's hours and wages must be utilized to determine the amount of the employer's share of cost.
- Course Materials or books
- Curriculum Development

Expenses that are not permissible under the match and are not reimbursable include:

- Equipment purchases
- Administration
- Facility upgrades/renovations
- Travel and incidentals

C. Restrictions

The EAWDB sub-recipient(s) must be familiar with and abide by the limitations and prohibitions on the use of funds allocated to the local area under WIOA title I-B §181 and Part 680 of federal regulations, as follows.

- WIOA funds cannot be used to pay the wages of incumbent employees during their participation in an economic development activity provided through a statewide workforce development system.

- When a relocation of a business results in the loss of employment of any employee of such business, no funds provided for employment training can be used for incumbent worker training until after 120 days has passed since the relocation that caused the loss of employment at an original business location in the United States.
- WIOA work-based training funds must not be used to directly or indirectly assist, promote, or deter union organizing.
- WIOA work-based training funds may not be used to directly or indirectly aid in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

D. Eligibility Criteria

Incumbent Worker Eligibility

In order to participate in IWT the incumbent worker must

1. employed;
2. Be title I eligible including the requirements for self sufficiency;
2. meet Fair Labor Standards Act requirements for an employer-employee relationship; and
3. have an established employment history with the employer for six (6) months or more. In the event that the incumbent worker training is being provided to a group of employees, only a majority of the employees in the group being trained must establish such employment history.

Incumbent worker training can also be used for underemployed workers, such as for workers who would prefer full-time work but are working part-time for economic reasons. While these workers are employed, they may have accepted reduced hours to gain or maintain employment or a previous dislocation has led them to accept reduced employment and often lower wages that may have a permanent effect on their careers. The use of these strategies may focus on increasing skills for underemployed frontline workers in an effort to advance these workers to more skilled positions with the same employer or industry sector leading to an increase in earnings through more work hours or an increase in pay. An incumbent worker does not have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA, unless they are also enrolled as a participant in the WIOA adult or dislocated worker program.

Employer Eligibility

In order to be eligible to receive assistance through WIOA IWT funds an employer must:

1. Align with the strategy of the EAWDB in fulfilling the vision and goals established for the local area (i.e., the local plan).
2. Be located in and have operations in the Eastern Board area or economic development regions;
3. Agree to retain the employees for a period of at least one year after training (excludes resignations and termination for cause);
4. Submit reimbursement requests with required documentation as described in their agreement;
5. Have a valid and current workers' compensation policy (to be uploaded to participants file)
6. Be current on unemployment insurance and workers compensation taxes, penalties and/or interest or related payment plan;
7. Agree to submit a complete list of demographic and eligibility information for the individuals to be trained including, SSN, start date and rate of pay;
8. Not have laid off workers within the last 120 days to relocate from another state;

E. IWT training processes

While IWT is a service that focuses on the needs of business, it shall still follow all the regular requirements for providing individual participant training. All required documentation shall be kept on file in the participants' electronic file in the New Mexico Workforce Connection Online System (NMWCOS).

1. Eligibility shall be determined and eligibility documents shall be compiled and maintained in the electronic file within the NMWCOS.
2. Staff will send AE staff the pertinent information to create an IWT contract number and enter the provider information into the NMWCOS.
3. An individual employment plan (IEP) shall be completed for each participant identifying the goal/purpose of the training and maintained in the participants' electronic file.
4. Streamlined IWT processes can include the following:
 - Staff may work with an employer to provide the eligibility documentation on potential participants. Special attention shall be paid to eligibility documentation requirements to ensure all data validation requirements are met.
 - Once eligibility is determined, staff must work with the employer to complete an overall IEP for each participant, identifying the need for training (individualized career service) which may be uploaded in the NMWCOS for each participant. For the purposes of the IWT an abbreviated IEP may consist of the employment goal and achievement objective and can be a paper document included for all participants or recorded electronically in the NMWCOS plan at the discretion of the subrecipient program director.

F. Considerations

In determining the feasibility for the use of IWT the local board and its subrecipients will consider the following:

1. The characteristics of the incumbent workers to be trained (i.e., the extent to which these individuals historically represent individuals with barriers to employment as defined in WIOA Section 3(24), and how such individuals would benefit from a skills gain that results in retention or advancement).
2. The quality of the training (e.g., industry-recognized credentials, advancement opportunities, etc.).
3. The number of participants the employer plans to train or retrain.
4. The wage and benefit levels of participants (before and after training).
5. The occupation(s) for which incumbent worker training is being provided must be in-demand as defined by WIOA Section 3(23) and as determined by workforce development area-specific labor market information.
6. Employer's industry status.
 - Is the employer in:
 1. an in-demand industry as defined by WIOA Section 3(23) and determined by labor market information; or
 2. a stable industry as determined by labor market information; or
 3. a declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in incumbent worker training?

The EAWDB sub-recipient(s) will document the factors that were considered in approving an incumbent worker training project with an employer.

G. Contracts

Title 1 service providers must address the following factors when developing an incumbent worker training contract:

- Special training requirements of the employer (or group of employers);
- Agreement that the employer will pay for the significant cost of the training;
- Agreement that an appropriate commitment is made by the employer to employ the individuals upon successful completion of the training;

- Performance outcomes;
- Description of and agreement on the curriculum; and
- A clearly stated goal.

Staff must document the factors that were considered in approving an IW training contract with an employer (or group of employers).

H. Incumbent Worker Training Documentation:

The training agreement, related information and documentation must be kept by the Title I service provider. The service provider is responsible for ensuring the information and documentation is uploaded and available for monitoring and review as required.

- A. Customized training agreement/contract
- B. Assurances
- C. Customized training plan
- D. Customized training plan modification (if applicable)
- E. Case notes to track customer interaction (recorded in NMWCOS).

I. Performance Accountability

Due to WIOA sec. 134's unique eligibility requirements, individuals who receive only incumbent worker training are reportable individuals and not participants required for inclusion in the WIOA performance accountability calculations. As a result, an individual who only receives incumbent worker training and does not become a core program participant will not be included in the calculation of the primary indicators of performance for negotiations and accountability purposes. However, the EAWDB sub-recipient(s) are required to collect and report the outcomes of individuals in receipt of incumbent worker training on the primary indicators of performance, among other required elements.

J. Conflict of Interest

State and local board members and members of standing committees may not vote or nor participate in any decisions regarding the provision of services by such members or any organization they directly represent, nor on any matter that would provide any direct financial benefit to that member or the member's immediate family. For example, an EAWDB member who is also an employer who wants to use services on a fee-for-service basis would be prohibited from voting to approve the use of local area services, facilities, or equipment for employment and training activities to such board member's incumbent workers. Neither membership on the state board, local board, or standing committee, nor receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions. In accordance with §200.112 of the Uniform Guidance, recipients of federal awards must disclose in writing any potential conflicts of interest. Sub-recipients must disclose in writing any potential conflict of interest to the recipient of grant funds.